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U.S. Citizenship and Immigration Services

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[redacted]

FILE: LIN 03 138 52946 Office: NEBRASKA SERVICE CENTER Date: FEB 25 2005

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel stated that the director applied the wrong standard and was biased.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Bachelor of Medicine/Bachelor of Surgery from Nagpur University and a Master's degree in Health Informatics from the University of Alabama. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that

> exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

According to his resume, the petitioner worked as a physician and surgeon in Nagpur, India from 1992 to 1995. The petitioner did not provide his job title for his position at [redacted] where he "attended rounds" or at [redacted] where he "followed the patients from the triage room through the whole process." While working towards his Master's degree in Health Informatics, the petitioner worked at the [redacted] as an Echocardiography Research and Health Informatics Consultant. At the time of filing, the petitioner was working as a data management specialist for Alegent Health. In response to the director's request for clarification regarding the petitioner's occupation, counsel asserted that the petitioner was doing his family practice residency with Creighton University Medical Center. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). While the petitioner submitted three letters from Creighton University, none of them indicate the position the petitioner currently fills. Counsel further stated that the petitioner "has conducted research in the past and is anticipating more scholarly works in the future."

All of the areas in which the petitioner has worked are areas of intrinsic merit. Not all of these areas, however, produce benefits that are national in scope. *Matter of New York State Dep't. of Transp.*, provides the following examples of intended employment where the benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Based on this logic, the benefits of a practicing physician or surgeon are not national in scope as defined above. We acknowledge that several of the witnesses and some of the materials in the record suggest a shortage of physicians who specialize in head and neck surgery. As of November 12, 1999, Section 203(b) of the Act specifies that doctors working in underserved areas are eligible for the national interest waiver provided they meet certain requirements. The petitioner does not assert that he will be working in an underserved area and does not submit the documentation required under 8 C.F.R. § 204.12(c). We further note that the commentary to the relevant interim regulations, at 65 Fed. Reg. 53889 (2000), provides:

> While the statutory language says "any physician," the Service notes that HHS currently limits physicians in designated shortage areas to the practice of family or general medicine, pediatrics, general internal medicine, obstetrics/gynecology, and psychiatry. Unless HHS establishes shortage areas for other fields of medicine, only these fields of medicine are covered by this rule.

As the petitioner's claim to eligibility is based on Section 203(b)(2)(B)(i), not (ii), we must evaluate his claim pursuant to *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 215. Under that analysis, as discussed above, merely working as a physician or surgeon is not sufficiently national in scope. Moreover, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221. Thus, we cannot consider any shortage data. Moreover, such data would not transform the benefits of a practicing surgeon or physician from local to national.

The petitioner's job duties as a data management specialist included supporting Alegent's performance improvement process, regulatory compliance, patient safety and risk reduction "for the system." The petitioner also was responsible for improving the quality and cost efficiency of data management systems. The petitioner also designed, maintained, updated and trouble shot the employer's computer systems. These duties suggest a purely local benefit to Alegent Health System and its patients. Initially, counsel asserted that the petitioner "has developed [a] website on the Health Informatics server." The record contains no evidence that this site is routinely relied upon by hospitals beyond the petitioner's employer. Thus, its potential for a national influence is unknown.

We acknowledge that the petitioner has participated in medical research. We have never disputed the potential for national impact of medical research. In light of the above, this research must form the sole basis for our analysis below.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

As briefly addressed above, the petitioner submitted witness letters and other materials attesting to a shortage of physician-scientists. Several witnesses attest to the unique nature of the petitioner's multidisciplinary skills and clinical experience with echocardiography. It cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221. Simple exposure to advanced technology is similarly insufficient. *Id.* Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223. On appeal, counsel discusses the inapplicability of the labor certification process for physician scientists. Even if true, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, n. 5.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

[redacted] Director of Nuclear Medicine at Creighton University Medical Center, asserts that the petitioner has "conducted numerous pioneering researches [sic] in the area of Echocardiography." [redacted] does not elaborate on the significance of this work other than to assert that it has been "cited numerous times." Another reference [redacted] one of the petitioner's collaborators on several of his case studies, provides additional detail. Specifically, [redacted] asserts that the petitioner "has performed pioneering research in the area of 3-D echocardiography." [redacted] Co-Director of the Diabetes Institute at the Ochsner Clinic Foundation in New Orleans, further explains that the petitioner has demonstrated that transesophageal echocardiograms (TEE) can detect atherosclerotic lesions in the thoracic aorta that can lead to strokes.

The petitioner's actual citation record does not reveal "numerous" citations of his work. The petitioner submitted evidence that eight of his case studies on TEE have been cited, with seven being the most cites of any one article. A closer look at the citations, however, reveals that [redacted] a coauthor, is the author of all seven articles that cite the petitioner's 2001 article on left vertebral arteries in *Echocardiography*. Self-citation is a normal and expected practice, but it cannot establish the petitioner's influence beyond his own circle of colleagues. The only article to receive more than a single independent citation is the petitioner's 2000 article on coronary arteries in *Echocardiography,* which three independent research groups have cited. Three citations are not significant.

Moreover, as noted by the director, the citation [redacted] of the petitioner's 2000 case study on TEE analysis of a descending aortic aneurysm rupture into the left lung merely cited the study as an example of a procedure the author declined to use because of the risk to the patient. Counsel responds that new procedures have risk and that there are positive aspects to TEE. We concur with counsel and note that [redacted] acknowledges that TEE "is frequently used intraoperatively to assess cardiac function." Nevertheless, we concur with the director that this article fails to establish reliance on the petitioner's work. [redacted] cites the petitioner's work as an example of TEE's frequent use, not to credit the petitioner with contributing to TEE's frequent use.

Finally, the record contains no evidence that the petitioner designed TEE; rather he has authored case studies reporting the results of his use of the technology. Simple exposure to advanced technology does not warrant a waiver of the labor certification requirement in the national interest. *Id.* at 221.

[redacted] provides more detail regarding the petitioner's Health Informatics work. Specifically [redacted] asserts that the petitioner authored "cutting edge articles such as 'Evaluation of Computer-based Speech Recognition Systems in Healthcare.'" [redacted] otes that this work was cited in a progress report on Informatics for the National Heart Attack Alert Program published by the University of Alabama. Far from a positive reference to the petitioner's project, however, the report states:

> [The petitioner] completed an independent study (HI 695) evaluating the off-the-shelf L&H VoiceXpress Professional (Version 4) voice recognition system. The results were not encouraging. There may be several reasons for the failure: the study was performed in a noisy computer lab without a special microphone, the Indian student's accent was too "thick," or the system required a much longer "training" period since we did not purchase a medical vocabulary with this system. In spite of our disappointment, we are not giving up on this technology.

The director quoted the above language as evidence that this project was not a breakthrough in the field. On appeal, counsel asserts that the director's use of language referencing an accent is evidence of bias. Counsel reads the director's quote out of context. The petitioner submitted this report as evidence of his influence in the field. Thus, the report's evaluation of the petitioner's work is extremely relevant. For whatever reason, this project was not a success and the director did not err by quoting the language confirming the disappointing results of the project. In fact, had the director not acknowledged the several possible *external* factors that may have affected

the results, the decision might have implicated incompetence, which would have been more prejudicial to the petitioner. Regardless, counsel's appellate characterization of this project, "creating a revolutionary voice recognition system to improve quality of medical care," is inaccurate. The report clearly states that the petitioner was testing a system purchased "off-the-shelf" by his employer. We fail to see how testing a voice recognition system developed by someone else constitutes "creation." Ultimately, whether successful or not, this project does not appear to have the potential for a national impact. Even if the report's evaluation had been positive, recognition by one's own employer is hardly evidence of an impact on the field as a whole.

[redacted] also discusses the petitioner's expertise as a physician and his work relating to risk reduction for his employer. As stated above, while we do not question the intrinsic merit of this work, this work has a purely local benefit. The record contains no evidence that this work has proven influential beyond the petitioner's employers.

Finally [redacted] notes that the petitioner is included in *Americas Registry of Outstanding Professionals*, has been interviewed on All India Radio, received an academic award from the University of Alabama, and is a member of professional associations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

First, the record lacks any evidence from the registry acknowledging the petitioner's inclusion and explaining the significance of such inclusion. For example, the record does not establish whether this registry is simply a vanity press, such as *Who's Who.*

Second, the membership requirements submitted do not suggest that the petitioner was admitted as a member based on his contributions to the field. For example, membership in the International Society of Cardiovascular Ultrasound (ISCU) is open to "members of the medical community, including physicians, scientists and technologists who have demonstrated interest in the field of application of ultrasound to cardiovascular diagnosis and treatment and who have indicated their desire to be a member of the Society by payment of their annual dues and who further have been accepted for membership upon recommendation of the Board of Directors. Membership in the Healthcare Information and Management Systems Society (HIMSS) is open to "all individuals and organizations that are active and/or interest in the fields of healthcare information and managements systems, subject to the restrictions in HIMSS regulations and procedures." Membership in the American Health Information Management Association (AHIMA), an association that establishes and maintains standards for the initial certification and maintenance of certification of health information management professionals, is open to "any individuals with an AHIMA certification in good standing." The materials for the American Medical Directors Association (AMDA) indicate that it is a professional association for medical directors and physicians practicing in the long term care continuum. The materials do not reveal any exclusive membership requirements. Finally, membership in the American College of Medical Quality (ACMQ) is open to those with a medical degree, an unrestricted license to practice, and membership in a national professional organization. Regardless, membership in professional associations is merely one criterion for aliens with exceptional ability, a classification that normally requires a labor certification. Meeting one, or even the requisite three requirements for that classification does not warrant a waiver of that requirement. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 222.

The record confirms that All India Radio broadcast the petitioner's eight minute "talk(s) / short story" in 1992. The record, however, lacks any evidence that the subject of this talk or short story relates to the petitioner's research in the field that serves as the basis of the petitioner's claim of eligibility. The petitioner's cited articles were all published in 2000 or later.

With the exception of the letter from [redacted] the letters submitted initially are all from the petitioner's immediate circle of colleagues. The remaining letters provide very similar information to that discussed above and need not be addressed. While [redacted] does not appear to have any connection to the petitioner, he does not indicate how he came to know of the petitioner's work and, more significantly, does not explain how the petitioner's research has influenced his own work.

In response to the director's request for additional evidence, the petitioner submitted two letters from staff at Creighton University Medical Center. [redacted] Chairman of the Department of Family Medicine, focuses on the petitioner's abilities as a physician, claiming that the benefits of this work is national in scope because the petitioner is teaching these skills to others. As discussed above, physicians, and teachers for that matter, can only demonstrate a local benefit.

In a second letter on appeal, [redacted] asserts that the petitioner "has excelled by introducing to the medical world the technology that will govern [the] future practice of medicine." [redacted] discusses the petitioner's "revolutionary strides in creating 3-D and 4-D imaging for diagnosing heart disease." As discussed above, there is little objective evidence, such as numerous citations by independent researchers or letters from independent practitioners attesting to their use of the petitioner's work, to support this assertion. Moreover [redacted] further asserts that the petitioner "played a key role in the development of a voice recognition system aimed at improving [the] quality of medical care." As discussed above, the petitioner's work on this project consisted of testing a system developed by someone else and purchased by his employer. Even if successful, which it was not, this project would not constitute "development" of such a system. Thus [redacted] assessments of the petitioner's past work for others have somewhat reduced evidentiary value.

[redacted] the Family Practice Residency Director, reiterates the information discussed above. The assertions regarding the significance of the petitioner's citation record and radio appearances have all been addressed above. [redacted] also discusses a recent employee award presented to the petitioner after the date of filing. This award has no relevance to the petitioner's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In summary, the majority of the petitioner's work, as a physician, surgeon and consultant, does not have the potential for national benefits. Further, the petitioner has worked with technology developed by others: TEE and a voice recognition system purchased off the shelf. The petitioner did not develop either system and his work has not been shown to be particularly influential in the field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.